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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,525	06/06/2000	Manuel de Jesus Arana Rosainz	294-83	8985
23869	7590	09/21/2004	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			SHAHNAN SHAH, KHATOL S	
			ART UNIT	PAPER NUMBER

1645

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,525

Applicant(s)

ARANA ROSAINZ ET AL.

Examiner

Khatol S Shahnian-Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 85-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 85-88, 91 and 96 is/are rejected.
- 7) ☒ Claim(s) 90, 92-95 and 97-99 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 7/30/2004 has been entered.
2. Currently claims 85-99 are pending and under consideration.

Rejections Withdrawn

3. Rejection of claims 85-99 under 35 U.S.C. 101, made in paragraph 10 of the office action mailed 1/26/04 is withdrawn in view of applicants' amendments.
4. Rejection of claims 85-99 under 35 U.S.C. 112 second paragraph, made in paragraph 13 of the office action mailed 1/26/04 is withdrawn in view of applicants' amendments.

Rejections Maintained

5. Rejection of claims 85-88, 91 and 96 under 35 U.S.C. 102 (b), made in paragraph 15 of the office action mailed 1/26/04 is maintained.

The rejection was as stated below:

Claims 85-88, 91 and 96 are rejected under 35 U.S.C. 102(b) as being anticipated by Gazzano-Santoro et al. (US Patent 5, 731,415).

Claims are drawn to a LPS binding protein, which is derived from SEQ ID NO 1. Gazzano-santoro et al. teach a LPS binding protein, which is derived from SEQ ID NO 1. (see attached sequence alignment Accession Number AAW 40153). Gazzano-santoro et al. teach biologically active LPS binding protein derivatives, which are characterized by the ability to bind

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and neutralize LPS. (see abstract and column 28, example 23). Gazzano-santoro et al. teach both N and C terminal regions (see columns 1, 4 and 6). Gazzano-salltoro et al. teach label assays (see column 8). The prior teach the claimed invention.

Applicants' arguments filed 7/30/04 have been fully considered but they are not persuasive.

Applicants submit that the prior art discloses peptides containing a part of LBP. Some of the disclosed peptides contain SEQ ID NO: 1. Applicants argue that the prior art does not disclose the claimed substitution modification of SEQ ID NO: 1.

It is the examiner's position that the prior art disclose the claimed substitution modification of SEQ ID NO: 1 for example column 6, lines 55-65 teaches substitution and modification. Also see example 23, column 28, lines 50-65.

New Rejection

6. Claim 85 is rejected under 35 U.S.C. 102(b) as being anticipated by Arana et al. (Biotechnologia Aplicada Vol.12, No.2, 1995). Prior art of record.

The invention is drawn to peptides that are derived from a protein called "LBP" lipopolysacchride binding protein and modified.

Arana et al. disclose peptides that are derived from a protein called "LBP" lipopolysacchride binding protein and modified (see page 101). Arana et al. teach a 14 amino acid residue peptide identical to SEQ ID NO: 1 undergone one amino acid modification (see experimental procedure). The prior art teach the claimed invention.

Note: claims 86-99 are objected to as being depended from rejected claim 85.

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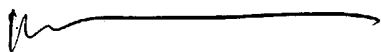
Conclusion

7. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol S Shahnan-Shah whose telephone number is (571)-272-0863. The examiner can normally be reached on 7:30am-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith can be reached on (571)-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

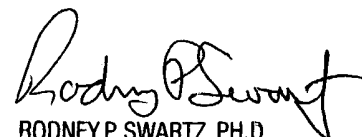


Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

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September 19, 2004



RODNEY P. SWARTZ, PH.D.
PRIMARY EXAMINER